

REMARKS

Status of the Claims

Claims 5 and 8-9 are pending in this application.

Claim 5 is rejected.

Claims 8 and 9 are allowed.

Claim 5 has been amended. Support for these amendments can be found throughout the specification, claims, and drawings, as originally filed.

Rejection of Claim 5 Under 35 U.S.C. § 112

Claim 5 stands rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Office Action indicated that it is unclear what is meant in claim 5 regarding the language of an anvil "between an annular surface portion of which anvil and said one end of the horn are vibrantly pressed a wall of the container and said flange to each other." The Applicant respectfully traverses the 35 U.S.C. § 112 rejection of claim 5.

Claim 5 has been amended to include the elements of "an anvil having an annular surface portion," and to have the elements of "a wall of said container and a flange of said fitment being vibrantly pressed between said annular surface portion and said one end of said horn, thereby welding said wall and said flange to each other." The specification in paragraph [0014] clearly states that the outer portion of the flange 28 of the pour spout 26 is pressed against an annular surface portion of the anvil 2, the head portion 14, the ring portion 16, and the screw-threaded part of the fitment 22 being received with clearance in the recess 20. *See Paragraph [0014].*

It is clearly disclosed in the drawing and in the specification that a wall of the container and a flange of the fitment are vibrantly pressed between the annular surface portion and one end of the horn, thereby welding the wall and the flange to each other. Applicant maintains that the annular surface portion is on the anvil itself. Therefore, the Applicant respectfully requests withdrawal of the rejection.

Allowable Matter

The Office Action indicated that claim 5 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112. Claim 5 has been amended to overcome the rejection under 35 U.S.C. § 112. Additionally, Applicant had previously faxed these amendments to the Examiner. On February 17, 2009, in a phone conversation with the Examiner, the Examiner indicated that the previously faxed amendments had overcome the rejection under 35 U.S.C. § 112. The Advisory Action also indicated that the amendment had overcome the rejection under 35 U.S.C. § 112. It is now believed that claim 5 is in condition for allowance, and Applicant respectfully requests allowance thereof.

The Office Action and the Advisory Action also indicated that claims 8 and 9 have been allowed. Applicant kindly thanks the Examiner for the allowable subject matter. Applicant further believes that the amendments made to claim 5 places the claim in condition for allowance.

CONCLUSION

It is respectfully submitted that in view of the above amendments and remarks the claims 5 and 8-9 are in condition for allowance. Therefore, Applicant submits that the pending claims are properly allowable, which allowance is respectfully requested.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 364-4300 if any unresolved matters remain.

Respectfully submitted,

WARN PARTNERS, P.C.
Attorneys for Applicant(s)

Dated: March 3, 2009

By: 

Philip R. Warn
Reg. No. 32775

P.O. Box 70098
Rochester Hills, MI 48307
(248) 364-4300

PRW:RPB:jo